

CAROLYN C. STOCKMEYER, INDIVIDUALLY
AND AS EXECUTRIX OF THE SUCCESSION
OF EDWIN W. STOCKMEYER

IBLA 70-117

Decided October 30, 1970

Oil and Gas Leases: Acquired Lands Leases – Consent of Agency

Acquired lands oil and gas lease offers are properly rejected where the administering Federal agency has not given consent to issuing a lease because of uncertainty as to title to the lands involved.

Oil and Gas Leases: Discretion to Lease

Where the appropriate legal officers of the United States have, after due consideration, declared that in their respective opinions the United States does not have title to the mineral estate in certain described lands, it is within the Secretary's discretion to reject offers to lease such lands for oil and gas and to decline to reexamine the title for the purpose of responding to the offeror's contention that the title opinions are in error.

IBLA 70-117 :

BLM-A 042022 (La.) etc.

CAROLYN C. STOCKMEYER, INDIVIDUALLY : Acquired lands oil
AND AS EXECUTRIX OF THE SUCCESSION : and gas lease
OF EDWIN W. STOCKMEYER, DECEASED : application

: Decision affirmed

APPEAL FROM THE BUREAU OF LAND MANAGEMENT

Carolyn C. Stockmeyer, acting in her separate capacities as the offeror of oil and gas lease offer BLM-A 042026 and executrix of the succession of Edwin W. Stockmeyer, deceased, offeror of oil and gas lease offer BLM-A 042022, has appealed from the December 12, 1969, decision of the Chief, Branch of Mineral Appeals, Bureau of Land Management, which affirmed the rejection of those two lease offers, among others, by the Eastern States land office.

The offers were filed pursuant to the Mineral Leasing Act for Acquired Lands, 30 U.S.C. §§ 351-359 (1964). The subject offers were originally two of a number of offers which together included a strip of land occupied by a portion of the Inland Waterway in Louisiana, otherwise known as the Intercoastal Canal and as the Charenton Drainage and Navigation Canal, which is under the jurisdiction of the Corps of Engineers, Department of the Army.

The two Stockmeyer lease offers were rejected by separate land office decisions on the premise that the Corps of Engineers had advised that a valid title to these lands was not vested in the United States by the initial conveyances and that no fee interest in and to such lands was subsequently acquired by the Government.

A review of the factual background reveals that the various owners of the lands involved, circa 1881-1920, executed deeds purportedly conveying said lands to the United States for the construction of the Charenton Canal, for which an appropriation was made in the River and Harbor Bill passed in the third session of the Forty-Sixth Congress. These deeds were recorded, but work on the canal was not then undertaken, the United States did not physically take possession of the lands, and no overt acceptance of the deeds was evidenced by the United States.

On September 19, 1939, the Chief of Engineers requested the Attorney General's opinion as to whether valid title was vested in the United States, pointing out that "Subsequent to the transfer

of this canal strip the tract was partitioned among a number of heirs who claimed title by virtue of a reversion to them through non-use on the part of the Government." In his letter the Chief adverted to the opinion of James W. Hopkins, Examining Attorney, wherein doubt was expressed that the deeds vested title in the United States.

The Attorney General of the United States, in a letter dated February 26, 1940, and addressed to the Secretary of War, expressed his opinion that a valid title to the land was not vested in the United States saying in part:

A complete examination has been made of the abstract and title data submitted with your letter and it has been determined that although there are several objections which might render defective the title acquired by the United States on December 27, 1881, the principal objection arises from the failure of the Government to either formally accept the donation or take actual corporeal possession of the land.

The Louisiana Statutes provide that a donation of fee title to land must be formally accepted in precise terms and such acceptance recorded in a book of donations or that the grantee must go into actual possession of the lands donated. The title papers submitted fail to disclose that these necessary steps were taken.

For the above reasons, among others, I am of the opinion that a valid title to the instant land is not presently vested in the United States.

In the mid 1950's a number of oil and gas lease offers were filed, including the two here under consideration. These filings resurrected the question of the Federal title to the several parcels of land involved. The Bureau of Land Management referred the question of title to the land covered by Carolyn C. Stockmeyer's application (BLM-A 042026) to the Solicitor of the Department of the Interior, who in turn referred the matter to the Department of Justice with a request that a suit to quiet title be initiated. The Acting Assistant Attorney General, Lands Division, indicated that the action would be initiated upon receipt of an abstract of title certified to date. Personnel of the Bureau and the Corps of Engineers, after a considerable

expenditure of time and expense, recovered the old abstract from War Department files. It was then necessary to employ a private abstract firm to bring the abstract up to date from 1925 at a cost of \$1,203.75.

After a review of the title documents and twelve rejected lease offers then pending adjudication on appeal to the Director, Bureau of Land Management, the Solicitor and the Attorney General selected one tract and instituted an action to quiet title thereto in the belief that the determination in that case would lead to a resolution of the title difficulties involved in the adjudication of the other eleven lease offers.

The judgment rendered in that case held that the fee title to the land in question was vested in the principal defendant in the case, subject only to the right-of-way and servitudes granted to the United States in connection with and for the construction and operation of the Inland Waterway. It was further ordered that all costs of suit be assessed the United States. United States v. A. D. Moore, et al., C.A. No. 9729 (D. La., October 11, 1967).

On the strength of that decision the Chief, Branch of Mineral Appeals affirmed the rejection of all the offers to lease the lands occupied by the Inland Waterway.

Appellant here argues that the deed in United States v. A. D. Moore, et al., supra, was not substantially the same as the deeds whereby the United States acquired the lands involved in these applications, that the granting and habendum clauses clearly conveyed the fee, and that the United States is therefore vested with title to the mineral estate.

We do not find appellant's arguments persuasive, but even if we did, the circumstances would militate against the issuance of these leases.

The Corps of Engineers, the Federal agency administering the acquired land has not given its consent, and such consent is a prerequisite to this Department's issuing a lease. Such consent is required by the Act of August 7, 1947, 61 Stat. 913, 30 U.S.C. 352 (1964); as well as by regulation (43 CFR 3111.1-2).

Moreover, even if the Corps of Engineers were to give its consent the offers to lease would be properly rejected in the exercise of the Secretary's discretion under the Mineral Leasing Act for Acquired Lands, supra. Extensive reviews of the records

pertaining to the quality, character and extent of the Federal interest in and to the entire involved segment of the waterway have been conducted by legal officers of the Corps of Engineers, the Solicitor of the Department of the Interior and the Attorney General of the United States, culminating in a quiet title action involving one parcel which they believed to be representative of all the others. This has been done at considerable public expense over a long period of time. Although there has not been a judicial determination that the United States does not own the minerals in the specific parcels of land covered by these applications, the mere uncertainty regarding the legal title is a sufficient basis for the rejection of the lease offers. Duncan Miller, A-30451 (November 17, 1965); Pexco, Inc., et al., A-28017 (July 11, 1960).

The filing of these offers and the assertion by the offeror that valid title reposes in the United States does not require that the issue be resolved conclusively, absent a showing that the public interest would best be served thereby. In this case we are of the opinion that the time and cost incident to a reexamination of the question and a final adjudication of the rights of the parties for this purpose would not constitute an economic public benefit.

The facts in this case may easily be distinguished from those which obtained in The California Co., et al., A-30287 (March 25, 1969), vacated and remanded upon reconsideration (June 3, 1969). In that case the United States maintained that it had title, the acquiring agency was amenable to a new request for its consent to leasing, and the Department was persuaded that the public interest would be served by readjudication of the offers on the basis of current land office records.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior (211 DM 13.5; 35 F.R. 12081) the decision appealed from is affirmed.

Edward W. Stuebing, Member

I concur.

I concur.

Francis E. Mayhue, Member

Martin Ritvo, Member

